

REMARKS

Claims 38-49 are currently pending in the subject application, and are presently under consideration. Claims 38-49 are rejected. Favorable reconsideration of the application is requested in view of the comments herein.

I. Rejection of Claims 44-49 Under 35 U.S.C. §102(e)

Claims 44-49 stand rejected under 35 U.S.C. §102(e) as being anticipated by Haartsen, U.S. Patent No. 6,650,630 ("Haartsen"). Withdrawal of this rejection is respectfully requested for at least the following reasons.

A Declaration under 35 C.F.R. §1.131 is being filed with this Response. It is respectfully submitted that the Declaration presents facts sufficient to antedate the Haartsen reference. Specifically, the showing of facts in the attached Declaration and exhibits establishes conception of the present invention in this country prior to the effective date (June 25, 1999), of Haartsen to a constructive reduction to practice of the present application, coupled with due diligence. Therefore, it is respectfully submitted that Haartsen should be withdrawn as prior art and, as a result, rejections in the Office Action relying on Haartsen should be withdrawn.

Submitted as exhibit A ("Exhibit A") of the attached declaration ("the Declaration") is being submitted to show conception of the invention prior to the effective date of Haartsen. Conception is complete when an idea is defined clearly enough in an inventors mind that merely ordinary skill would be necessary to reduce the invention to practice. *Seewall v. Walters*, 21 F.3d 411, 415, 30 U.S.P.Q.2d 1356, 1359 (Fed. Cir. 1994). The averment in the Declaration that the paper in the form of a PowerPoint® presentation corresponding to Exhibit A was written prior to June 25, 1999 is sufficient to establish conception prior to the effective date of Haartsen. See MPEP 715.07. One or ordinary skill in the art could reduce at least independent claims 38, 44 and 47 to practice without undue experimentation in view of Exhibit A.

Additionally, the Declaration establishes diligence from prior to June 25, 1999 until the date of constructive reduction to practice when the Priority application was filed on March 1, 2000. The Declaration demonstrates that a named inventor completed a second written

description in the form of a PowerPoint® presentation (Exhibit B) on July 9, 1999. Furthermore, the inventors submitted an invention disclosure (Exhibit C) on July 29, 1999. On August 9, 1999, the invention was forwarded to the Assignee's attorney for preparation of a patent application, as evidenced by Exhibit D. On September 8, 1999 supplemental disclosure pages were forward to the Assignee's attorney, as evidenced by Exhibit E. On September 14, 1999, drawings were provided to the Assignee's attorney, as evidenced by Exhibit F. A draft of the priority patent application was sent to the Assignee on September 23, 1999, as evidenced by Exhibit G. On October 4, 1999, a copy of the draft was forwarded to the inventor from the legal department, as evidenced by Exhibit H. On February 3, 2000, a request for a workable disk from the legal department to the Assignee's attorney was requested, as evidenced by Exhibit I. On February 4, 2000, a disk from the Assignee's attorney was received by the legal department containing a copy of the draft application, as evidenced by Exhibit J. Changes of the draft were made, and the changes were forwarded to the inventors on February 9, 2000, as evidenced by Exhibit K. A patent application was submitted to the United States Patent and Trademark Office on March 1, 2000. A Notice of Allowability was received on June 17, 2003 for the priority application, a continuation application (the present application) was filed September 15, 2003, and the priority application issued as a patent on December 16, 2003.

It is respectfully submitted that the patent attorneys exercised reasonable diligence in drafting and filing the present application. Reasonable diligence does not require that a patent attorney engaged in normal practice to concentrate on any one application to the exclusion of others. *Watkins v. Wakefield*, 443 F.2d 1207, 170 U.S.P.Q. 274, 275 (C.C.P.A. 1971). Thus the Application has established conception prior to Haartsen's effective date of June 25, 1999, and diligence from the conception to the constructive reduction to practice on March 1, 2000. Accordingly, in view of the above arguments, the Declaration under 37 CFR §1.131 is entitled to antedate Haartsen.

For the reasons described above, claims 44-49 should be patentable over the cited art. Accordingly, withdrawal of this rejection is respectfully requested.

II. Rejection of Claims 38-43 Under 35 U.S.C. §103(a)

Claims 38-43 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Zenick, Jr. et al., U.S. Patent No. 6,128,469 ("Zenick") in view of Haartsen. Withdrawal of this rejection is respectfully requested for at least the following reasons.

Withdrawal of this rejection is respectfully requested for the reasons stated above as the Haartsen reference is not prior art to the present application. Additionally, Zenick alone does not make obvious claims 38-43.

For the reasons described above, claims 38-43 should be patentable over the cited art. Accordingly, withdrawal of this rejection is respectfully requested.

III. Double Patenting

Claims 38-49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 16 of U.S. Patent No. 6,665,518 ("518"). A terminal disclaimer is filed herewith to overcome the double patenting rejection.

For the reasons described above, claims 38-49 should be patentable over the cited art. Accordingly, withdrawal of this rejection is respectfully requested.

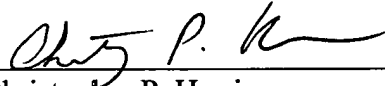
CONCLUSION

In view of the foregoing remarks, Applicant respectfully submits that the present application is in condition for allowance. Applicant respectfully requests reconsideration of this application and that the application be passed to issue.

Please charge any deficiency or credit any overpayment in the fees for this amendment to our Deposit Account No. 20-0090.

Respectfully submitted,

Date 8/3/05



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